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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,993	01/03/2007	Nissim Garti	27524U	3939

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THE NATH LAW GROUP  
112 South West Street  
Alexandria, VA 22314

EXAMINER
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METZMAIER, DANIEL S

ART UNIT	PAPER NUMBER
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1796

MAIL DATE	DELIVERY MODE
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10/06/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/584,993	<b>Applicant(s)</b> GARTI ET AL.	
	<b>Examiner</b> Daniel S. Metzmaier	<b>Art Unit</b> 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                        |                                                                   |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/19/2007</u> .                                              | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Claims 1-18 are pending.

#### ***Priority***

1. Receipt is acknowledged of papers received in this national stage application from the International Bureau (PCT Rule 17.2(a)), submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

#### ***Drawings***

2. The drawings were received on 29 June 2006 are acceptable.

#### ***Specification***

3. The disclosure is objected to because of the following informalities: the Brief Description of the Drawings should refer to the individual figures individually or collectively and reference there to should correspond between the figure labels and the reference in the specification. As an example, there is no Fig. 5 per se, only Fig. 5A, 5B and 5C.

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-6, 8-9, 11 and 13-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Lynch et al, US PG PUB 2002/0153508 A1. Lynch et al discloses ternary

Art Unit: 1796

systems comprising: (I) water as solvent (paragraph [0067]), (II) alcohol as a hydrotropic agent (paragraph [0045]-[0048]), (III) a fatty acid or ester of a fatty acid including glycerol monooleate as an amphiphilic substance or surfactant (paragraph [0059]-[0067]). The hydrotrope (paragraph [0045] et seq) enable the formation of the cubic phase in the isotropic liquid. The claims read on the materials disclosed in the Lynch et al reference (Table E1 and examples 1, 3 and 4).

Claims 8 and 14 are inherent for the compositions of Lynch et al as an inherent property of an otherwise anticipated composition.

Lynch et al (paragraph [0128] et seq) discloses pharmaceutical, cosmetic and agricultural ingredients may be incorporated in the compositions in place of the part of (A), the hydrotrope and the active ingredients may be (paragraph [0129]) water soluble or oil soluble.

Claims 17 and 18 are included herein because the claims 17 and 18 limit either said hydrophobic substance or the hydrophilic substance but each claim reads on the full scope of the undefined said hydrophobic substance or the hydrophilic substance and Lynch et al broadly contemplates both.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 1796

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lynch et al, US PGPUB 2002/0153508 A1, in view of Vatter et al, US 6,528,071.

Lynch et al discloses compositions as set forth in the above anticipation rejection, which the citations and reasoning are herein incorporated by reference.

Lynch et al differs from claims 7 and 12 in the use of a ketone rather than the alcohol.

Lynch et al in (paragraph [0128] and [0129]) discloses the pharmaceutical, cosmetic and agricultural ingredients may take the place of the part of (A), the hydrotrope. Lynch et al ([0129]) further teaches the active ingredients may be water soluble or oil soluble.

Vatter et al discloses carriers for vitamins among other ingredient. Vatter et al (claims 12 and 13) disclose the compositions can take the form of cubic phase liquid crystals. Vatter et al (column 12, lines 54 et seq) disclose flavor oils are may be

Art Unit: 1796

incorporated into the delivery compositions and typically comprise mixtures including ketones.

These references are combinable because they teach active ingredient delivery compositions that may be cubic phase liquid crystals. It would have been obvious to one of ordinary skill in the art at the time of applicants' invention to employ flavor oils having ketones as an active ingredient in the compositions of Lynch et al for part of or all of the part of (A), the hydrotrope.

9. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lynch et al, US PG PUB 2002/0153508 A1, in view of Spicer et al, PG PUB 2002/0160040 A1.

Lynch et al discloses compositions as set forth in the above anticipation rejection, which the citations and reasoning are herein incorporated by reference.

Lynch et al differs from claims 10 in the use of a ketone rather than the alcohol.

Lynch et al in (paragraph [0128] and [0129]) discloses the pharmaceutical, cosmetic and agricultural ingredients may take the place of the part of (A), the hydrotrope. Lynch et al ([0129]) further teaches the active ingredients may be water soluble or oil soluble.

Spicer et al discloses cubic phase liquid crystals as carriers. Spicer et al (paragraph [0061]) discloses incorporating materials encapsulating for compositions that can spontaneously form cubic phase liquid crystals upon hydration.

These references are combinable because they teach active ingredient delivery compositions that may be cubic phase liquid crystals. It would have been obvious to one of ordinary skill in the art at the time of applicants' invention to employ

Art Unit: 1796

encapsulating materials in the compositions of Lynch et al for the advantages taught in the Spicer et al reference.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Metzmaier whose telephone number is (571) 272-1089. The examiner can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David W. Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/Daniel S. Metzmaier/  
Primary Examiner, Art Unit 1796**

DSM